

## REMARKS

Claims 2-22, 31-43, 45-53, 55-64, 67-69, 72, 73, 75-87 and 90-98 are pending in the application. Claims 32-34, 42, 57-59, 62-64, 67-69, 72, 73, 75-88 and 90-97 are allowed. Claims 2-22, 31, 35-41, 43, 45-53, 55, 56, 60, 61 and 68 are rejected. Claim 2 has been amended.

Claims 2-4, 6-22, 31, 36, 39, 41, 43, 45-53, 55, 56, 61 and 98 are rejected under 35 U.S.C. § 102(e) as being anticipated by Thackeray et al. Claims 5 and 40 are rejected 35 U.S.C. § 103(a) as being unpatentable over Thackeray et al. Claims 35 and 60 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Thackeray et al. in view of Saida et al. Applicants respectfully traverse the rejections.

The Examiner has considered Applicants' arguments of the June 16, 2004 Response but views them as non-persuasive. It is the Examiner's position that the argument that Thackeray et al. discloses a single phase material and not the two phase compound of the invention is not persuasive because the present claims do not require the material to have more than one phase.

Applicants have amended Claim 2 to include recitations that the compounds  $\text{LiM}^1_{x-y}\{\text{A}\}_y\text{O}_z$  and  $\text{Li}_2\text{M}^2\text{O}_3$  have phases structurally different from each other. This amendment was faxed to the Examiner on October 6, 2004 by Applicants' representative, F. Michael Sajovec, and discussed with the Examiner on October 7, 2004. It is believed that such amendment distinguishes Claim 2 over Thackeray et al.

Specifically, Thackeray et al. does disclose a composition having two components but goes to great lengths to describe its structure as "essentially a compound with a common oxygen array for both the  $\text{LiMO}_2$  and  $\text{Li}_2\text{MnO}_3$  components, but in which the cation distribution can vary such that domains of the two components exist side by side." (Column 3, lines 25-30.) Such does not describe a two-phase compound, i.e., two structurally distinct phases, as recited in the present claims. This is confirmed by the x-ray diffraction (XRD) patterns in Thackeray et al. and in the present application. The Thackeray et al. XRD patterns clearly show only one set of peaks from a single phase structure. Thackeray et al. at column 5, line 49 to column 6, line 9 even states that the compounds are "essentially single-

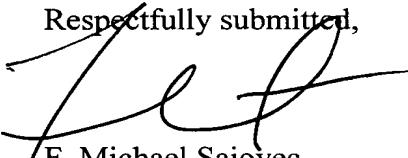
phase product[s]." The XRD patterns of the present invention clearly show a two-phase structure.

Thus, inasmuch as each and every element of the present claims are **not** found in Thackeray et al., the § 102 rejection of the claims should be withdrawn. With respect to the § 103 rejections, there is no suggestion in Thackeray et al. or Saida to have a composition having two separate phases, thus the § 103 rejections should also be withdrawn.

In re: Gao et al.  
Docket No.: 208-6164  
Serial No.: 10/040,047  
Page 18 of 18

## CONCLUSION

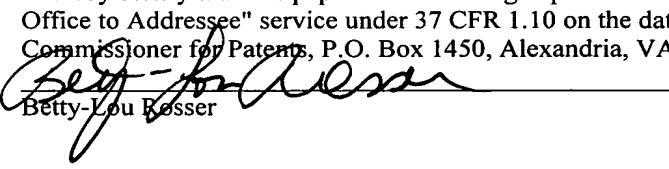
The concerns of the Examiner addressed in full, Applicants respectfully request withdrawal of the outstanding rejections and the issuance of a Notice of Allowance forthwith. No fee is believed due. However, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 50-0220. The Examiner is encouraged to direct any questions regarding the foregoing to the undersigned, who may be reached at (919) 854-1400.

Respectfully submitted,  
  
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Betty-Lou Kessner